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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/975,664	10/10/2001	Frank Fellhauer		8610

7590 12/30/2003  
Matthew J. Peirce, Esq.  
1550 Starlight Canyon Avenue  
Las Vegas, NV 89123

EXAMINER

TON, ANABEL

ART UNIT PAPER NUMBER

2875

DATE MAILED: 12/30/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/975,664

**Applicant(s)**

FELLHAUER, FRANK

**Examiner**

Anabel M Ton

**Art Unit**

2875

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

1. Claims 1,5,7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haines (1,894,173).

1. The recitation "a forward facing brake light" has not been given any patentable weight because it has been held that a preamble is denied the effect of a limitation where the claim is drawn to a structure and the portion of the claim following the preamble is denied the effect of a limitation where the claim is drawn to a structure and the portion of the claim following the preamble is a self contained description of the structure not depending for completeness upon the introductory clause. *Kropa v. Robie* 88 USPQ 478(CCPA 1951)

2. Haines discloses the instant invention except for the recitation of the from lens segments being mounted in a "gull-winged" shape. Haines discloses an external housing, the housing comprising a base, the housing further comprising a top piece fixedly attached to the base, (fig 1) the housing further comprising a lens, the lens comprising four separate segments (9), two larger segments and two smaller segments(right and left directional 9), the two larger segments being front-mounted, the two smaller segments being side-mounted (upper and lower segments 9)), a pair of compartments, a front compartment (10,15) and a rear compartment, both of the compartments being located within the external housing(fig 2), at least three light

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sources(28,32), a first light source, a second light source, and a third light source, the first light source being located in the front compartment, the second light source and the third light source being located in the rear compartment, and power means for providing power to the light sources(figs 2 and 3); all of the light sources within the external housing would be light bulbs; the rear compartment within the external housing would further comprise a pair of interior reflector compartments, each interior reflector compartment being located adjacent to a smaller segment of the lens, and further wherein at least one light source would be located within each interior reflector compartment(the interior segments 18 are metal therefore reflective)

3. It would have been obvious to one of ordinary skill in the art at the time the invention was made to mount the lens segments in a gull-winged shape since such an aerodynamic shaping of the lenses of the brake light is old and well known in the art for making the body design of an automobile more streamline and aerodynamic.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negative by the manner in which the invention was made.

5. Claims 2-4,6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haines.

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6. Hanes discloses the claimed invention except for reciting that the brake light is forward facing being attached to a location on the vehicle where it would be visible from a location in front of the vehicle. It would have been obvious to one of ordinary skill in the art at the time invention was made to place a brake light attached at a location where it would be visible from a location in front of the vehicle since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japiske*, 86 USPQ 70.

- The power means preferably comprises the battery located within the vehicle.
- Although Haines does not recite all the light sources within the external housing would turn on when the brake pedal in the vehicle would be depressed, and further wherein all the light sources within the external housing would turn off when the brake pedal in the vehicle would be released, it would have been obvious to one of ordinary skill in the art at the time the invention was made, that a brake light with multiple functioning lights would inherently turn on when the brake is depressed and off when it is released such as in modern automobiles.
- With regards to all of the light sources within the external housing would be light-emitting diodes, It would have been obvious to one of ordinary skill in the art at the time the invention was made to use an LED as the light source of the device of the instant invention since the examiner takes official notice that the advantages of LED over other light sources (i.e. reduced size, high efficiency, low power consumption, long life, resistance to vibrations, low heat production) are old and well known in the illumination art.

***Response to Arguments***

7. In response to applicant's argument that Haines (1,894,173) is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Haines discloses a rear signal light. Applicant argues that the instant invention requires only four lenses as opposed to the five segment/lenses disclosed by Haines. In response to applicant's argument of this point, applicant recites the term "comprising" in the preamble of the claim which is open ended language, meaning, that since the Haines reference has 5 segments/lenses it also has four, thus satisfying this limitation. With regards to the "gull winged shape" of the front segments, the abovementioned 103 rejection applies. With regards to the panels two smaller segments not being side mounted as stated by applicant, as seen in figure 1, they are side mounted with respect to front panel 3. With regards to the argument that the interior compartments fail to disclose reflector compartments, note that as shown by figure 4, the bracket to which the bulbs and electrical components are attached to be metallic and inherently reflective.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anabel M Ton whose telephone number is (571) 272-2382. The examiner can normally be reached on 08:00-16:30.

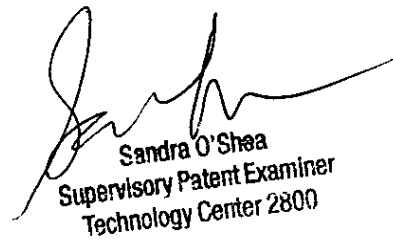
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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sandra O'Shea can be reached on (571) 272-2378. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.

Anabel M Ton  
Examiner  
Art Unit 2875

AMT



Sandra O'Shea  
Supervisory Patent Examiner  
Technology Center 2800